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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re United States Patent Application of:	)	Docket No.:	4270-135
Applicants:	)	Conf. No.:	1280
Application No.:	)	Art Unit:	2856
Date Filed:	)	Examiner:	Daniel Sean Larkin
Title:	)	Customer No.:	32763
PARALLEL FLUID PROCESSING SYSTEMS AND METHODS	)		

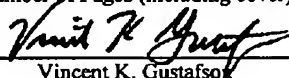
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ATTN: Examiner Daniel Sean Larkin

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Vincent K. Gustafson

March 13, 2006  
Date

**RESPONSE TO FEBRUARY 14, 2006 OFFICE ACTION IN  
U.S. PATENT APPLICATION NO. 10/821,567**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

This responds to the February 14, 2006 Office Action in the above-identified application.

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**A. Incompleteness of Election/Restriction Requirement**

The February 14, 2006 Office Action identified “claims 1-63” as pending in the application (February 14, 2006 Office Action, page 1); however, claim 64 was added in Applicants’ response filed on November 21, 2005 so that **claims 1-64 are currently pending**. Based on a telephone conversation between the examiner and the undersigned on March 13, 2006, Applicants understand that claim 64 is to be grouped with claims 21-63 in Species II, and grouped with claims 36-63 in Restriction Group II.

**B. Election of Species**

In the February 14, 2006 Office Action, the Examiner imposed a species election requirement and required Applicants, under 35 U.S.C. 121, “to elect a single disclosed species for prosecution on the merits to which claims shall be restricted if no generic claim is finally held to be allowable” as to the following patentably distinct species of the claimed invention:

Species I. The species of Figure 13, disclosed [at least] in paragraph [0084], and embodied in claims 1-20; and

Species II. The species of Figure 14, disclosed in [at least] paragraph [0119], and embodied in claims 21-63 (sic, 64).

In response to the species election requirement, Applicants elect **Species II**, as represented by **Figure 14 and embodied in claims 21-64**.

**C. Restriction Requirement**

In the February 14, 2006 Office Action, the Examiner imposed a restriction against claims 21-63 (construed by Applicants to relate to claims 21-64, as indicated previously), as between:

Group I. Claims 22-35, draw to a data correction method, classified in class 73, subclass 61.57; and

Group II. Claims 36-64, drawn to a method and apparatus for correction of retention times in multi-column chromatography, classified in class 73, subclass 61.57.

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The examiner specifically noted that claim 21 links Groups I and II (February 14, 2006 Office Action, page 5), and noted that the restriction requirement between the linked inventions is subject to the nonallowance of the linking claim, such that the restriction requirement shall be withdrawn upon allowance of the linking claim.

In response to the restriction requirement, Applicants hereby elect Group II, claims 36-64, in addition to linking claim 21.

Such election is with traverse.

The February 14, 2006 Office Action at pages 3-4 thereof bases the restriction requirement as between Group I and Group II solely on alleged *distinctness* of the subject matter of Group I and Group II claims, and thereby ignores the statutory criteria for restriction in 35 USC 121, which requires that:

**"[I]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions."**

The statute therefore requires as a basis for legally permissible restriction that the subject matter of respective claims be both independent and distinct. Neither criterion alone is sufficient. Both must be present in order for the restriction requirement to be proper under the statute.

The examiner's attention is directed in this respect to the provisions of MPEP Section 802.01 (Meaning of "Independent" and "Distinct"), which states, *inter alia*:

**"The term 'independent' (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect..."**

It is apparent from this provision of the MPEP that the subject matter of the Group I and Group II claims is not "independent" within the meaning of 35 USC 121, particularly where as here the examiner has expressly acknowledged that the respective Groups "are related" (February 14,

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2006 Office Action, page 4, noting that "Inventions I and II (claims 36-52) are related as combination and subcombination" and that "Inventions I and II (claims 53-63 (sic, 64)) are related as process and apparatus for its practice"(emphasis added)), and that therefore Groups I and II are NOT properly restricted.


Further, it is pointed out that the subject matter of the respective claims imposes no serious burden of searching (i.e., under MPEP 808.02) on the examiner, particularly since Groups I and II are directed to the same class and subclass (i.e., class 73, subclass 61.57) and since Group II contains only 11 claims. It is incumbent on the examiner to "explain why there would be a serious burden on the examiner if restriction is not required." MPEP 808.02.

According to the MPEP section 803:

**"[I]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP §803.**

Under the applicable criterion of this MPEP provision, the examiner is required to submit all of the Group I and Group II claims (i.e., claims 36-52 and 26-64) to examination on the merits.

Respectfully submitted,

  
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